Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1285

JACK MASCHHOFF,

Petitioner,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, LOCAL 22, NEWSPAPER GUILD OF DETROIT, and EMIL MAZEY,

Respondents.

BRIEF IN OPPOSITION FOR UAW AND MAZEY

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INTRODUCTION

As indicated more fully below, this case stopped being a case in the legal sense when Petitioner Maschhoff in 1975 failed to file a timely appeal from a summary judgment of dismissal of his original Complaint, which was based on the inadequacy of the Complaint itself, and when this Court subsequently denied his previous petition for Certiorari. It has since become somewhat of a "cause" to him or his attorney, and the only thing unusual about this matter is their obvious unwillingness to afford a respectable death to an action that never should have been brought in the first place.

COUNTERSTATEMENT OF FACTS

This case involves a collateral attack *vis-á-vis* an independent action "under" Rule 60(b) of the Federal Rules of Civil Procedure, 28 U.S.C. ——, on a final Summary Judgment of dismissal entered by the United States District Court for the Eastern District of Michigan, Southern Division, in a 1975 civil action between the *same parties* and involving the *same issues* that Maschhoff ultimately seeks to litigate here.[1] Maschhoff alleged there, as he does in the Complaint filed here, that the UAW, his former employer, laid him off ten years ago in violation of the then existing labor contract between the UAW and Respondent Guild Local 22, and that the Guild, his bargaining representative, thereafter breached its duty to fairly represent him by refusing to arbitrate his grievance.[2] The District Court dismissed the Complaint, finding that Maschhoff himself had failed to allege any facts in support of his conclusory allegations of a breach of the duty of fair representation, and that such a breach was a condition precedent to suing Respondents Mazey and the UAW, his employer, for a breach of labor contract.

Maschhoff's appeal from that dismissal was itself dismissed by the Sixth Circuit Court of Appeals for untimeliness.[3] His subsequent petition for a writ of Certiorari was also denied by this Court,[4] a fact conveniently overlooked in his present petition.

Thereafter, on November 5, 1976, Maschhoff filed the instant "independent action" under Rule 60(b), F.R. Civ.

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[1] *Maschhoff* v. *Automobile Workers, et al.*, —— F.Supp. ——, 89 LRRM 2098 (E.D. Mich. 1975).

[2] It was actually the Guild membership that voted in May, 1973 not to take the grievance to arbitration. *Id.*, at 2099.

[3] *Maschhoff* v. *Automobile Workers, et al.*, Docket No. 75-1922, —— F.2d ——, 92 LRRM 2506 (6th Cir. 1975).

[4] *Maschhoff* v. *Automobile Workers, et al.*, Docket No. 75-1338, 425 U.S. 993, 92 LRRM 2502 (1976).

P., seeking to set aside that final judgment because of an alleged fraud upon the district court. Although the "fraud" allegations are set forth in several subsections to paragraph 17 of the Complaint, the District Court noted that only two of them—subparagraphs 17(d) and 17(f) —even remotely touch upon the Guild's duty of fair representation, the finding of no breach of which was the sole basis for the prior dismissal.[5]

Limiting its attention to those allegations, and giving Maschhoff the benefit of all doubt by treating them as though true, the District Court nevertheless found that they were at best examples of "intrinsic fraud" and hence were insufficient to state an independent cause of action to set aside the earlier final judgment for alleged fraud upon the Court. On appeal, the Sixth Circuit Court of Appeals affirmed, noting that even if "intrinsic fraud" was a basis for such an independent action, Maschhoff had not factually alleged any reason why he could not have discovered and fully litigated the alleged "fraud" in the earlier action.

ARGUMENT

The District Court, citing *Dowdy* v. *Hawfill*, 189 F.2d 637 (D.C. Cir. 1951), *cert. den.*, 342 U.S. 830 (1951), properly granted Respondents' Rule 12(b)(6) Motion to Dismiss on the grounds that Maschhoff alleged at best only examples of "intrinsic fraud" and that such "fraud" was insufficient to state an *independent* cause of action for relief from a final judgment. *United States* v. *Throck-*

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[5] A breach of the duty of fair representation is a condition precedent to an employee maintaining an action against his or her employer under Section 301 of the Labor-Management Relations Act of 1947, as amended, 29 U.S.C. § 185, for an alleged breach of labor contract. *Vaca* v. *Sipes*, 386 U.S. 171, 17 L.Ed.2d 842, 87 S.Ct. 903 (1967). An employer, here the UAW, has a right to rely upon the finality of a grievance procedure disposition unless and until a breach of the duty has been established. Maschhoff simply failed to allege facts in his earlier action sufficient to overcome the Dismissal Motion.

morton, 98 U.S. 61, 68 (1878). See also *Serzysko* v. *Chase Manhattan Bank*, 461 F.2d 699 (2nd Cir. 1972), where the Second Circuit noted that even if the extrinsic-intrinsic dichotomy arguably did not survive this Court's decision in *Marshall* v. *Holmes*, 141 U.S. 589, 35 L.Ed. 870, 12 S.Ct. 62 (1891), which it did however, "the test suggested by that case seems to be whether there was an opportunity to have the ground now relied upon to set aside the judgment fully litigated in the original action." 461 F.2d at 702 n.2. The other circuits are in accord with that view. See, *e.g.*, *Keys* v. *Dunbar*, 405 F.2d 955, 957-958 (9th Cir. 1969). And see generally 11 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, § 2868 at 240 n.16.

The Sixth Circuit on appeal in this case, without deciding whether intrinsic fraud would ever support an independent action for relief from a final decision, simply affirmed on the basis that Maschhoff himself had failed to allege any facts whatsoever showing that he could not have reasonably discovered and fully litigated the alleged false representations in the prior action. Indeed, it is interesting to note and fatal to Maschhoff's position here that the provision of the labor contract that Maschhoff alleges in subparagraph 17(d) of the instant complaint was misrepresented in the earlier action, was not only quoted in the District Court's decision in that case,[6] but was also openly an exhibit in the Joint Appendix later filed in the Sixth Circuit.[7]

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[6] *Maschhoff*, *supra*, 89 LRRM at 2099.

[7] *Id.*, Joint Appendix, p. 29a, Docket No. 75-1922, 92 LRRM 2506 (6th Cir. 1975). Although the Sixth Circuit in the instant case concluded that reaching this point was unnecessary, the fact remains that, as pointed out by Respondents in their briefs below, virtually all of the documents now relied upon by Maschhoff as allegedly evincing the "fraud" were actually included as exhibits in the Joint Appendix filed in the earlier Sixth Circuit appeal.

CONCLUSION

The Petition filed in this case, like the earlier Petition denied by this Court, sets forth no reasons whatsoever for granting review. Accordingly, the Petition should be DENIED.

Respectfully submitted,

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